

Message Text

CONFIDENTIAL

PAGE 01 USBERL 00290 01 OF 02 141937Z

67

ACTION EUR-12

INFO OCT-01 ISO-00 HEW-02 OES-03 EURE-00 SAJ-01 CIAE-00

DODE-00 PM-03 H-01 INR-07 L-02 NSAE-00 NSC-05 PA-01

PRS-01 SP-02 SS-15 USIA-06 IO-10 BIB-01 (ISO) W

----- 016554

P 141830Z FEB 75

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 0491

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 0290

E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: FEDERAL CONSTITUTIONAL COURT DECISION ON
ABORTION LAW

REF: (A) BONN 2521; (B) BONN 2243; (C) USBERLIN 217

SUMMARY: WE ARE TRANSMITTING BELOW OUR SUGGESTIONS FOR RE-
DRAFTS OF BK/O AND BK/L THAT MAY BE USEFUL IN OBTAINING
FRENCH CONCURRENCE TO PROJECTS. END SUMMARY.

1. POLADS MET FEBRUARY 12 "UNTER SECHS AUGEN," I.E., WITHOUT
LEGAL ADVISERS, TO DISCUSS HOW TO CONTEND WITH FORTHCOMING
CONSTITUTIONAL COURT DECISION ON ARTICLE 218. FRENCH
POLAD STRENOUSLY OBJECTED TO PREVIOUS DISCUSSIONS BETWEEN
LEGAL ADVISERS AND SENATOR FOR JUSTICE KORBER, WHICH HE
REGARDED AS "NEGOTIATION" ON ALLIED LEGISLATION, THAT
SHOULD MORE PROPERLY BE PRESENTED TO SENAT AS ALLIED DIREC-
TIVE. MOREOVER, HE REGARDED SENATOR KORBER AS REPRESENTING
POLITICAL LEVEL, WHICH SHOULD NOT BE DEALT WITH BY
TECHNICAL ADVISERS. US AND BRITISH COLLEAGUES
SAID THAT HOW LEGAL ADVISERS WERE TO
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 00290 01 OF 02 141937Z

BE REGARDED WAS ESSENTIALLY AN INTERNAL FRENCH MISSION

MATTER, BUT AS FAR AS THEY WERE CONCERNED ANY MEMBER OF THEIR MISSIONS COULD BE AUTHORIZED TO HOLD DISCUSSIONS WITH ANY MEMBERS OF SENAT. THEY POINTED OUT IT WAS UNREALISTIC TO PRESENT SENAT WITH FAIT ACCOMPLI, THAT THERE WRE MANY INSTANCES OF SIMILAR DISCUSSIONS IN PAST, AND THAT THEY WERE PLEASED WITH RESULTS SUCH DISCUSSIONS HAD BROUGHT TO DATE, INASMUCH AS SENAT HAD ABANDONED ITS INITIAL ADAMANT STAND AGAINST AFFECTING CHANGES IN LAW THROUGH SUPPLEMENTAL LEGISLATION AS OPPOSED TO COURT RULING OR RESOLUTION.

2. THIS OUT OF THE WAY, REMAINDER OF DISCUSSION WAS SOMEWHAT MORE CONSTRUCTIVE. FRENCH POLAD SAID THAT HIS GOVERNMENT WAS ABSOLUTELY OPPOSED TO ANY BK/O WHICH WOULD OPEN ALLIES TO CHARGE THAT THEY WERE IN EFFECT ORDERING COURT'S DECISION TO BE TAKEN OVER IN BERLIN. IN HIS VIEW, SENAT HAD ALL THE TOOLS IT NEEDED AT HAND AND NO ALLIED ACTION WAS REQUIRED, I.E., THE SENAT SIMPLY HAD TO PRESENT AN AMENDING LAW TO THE ALLIES WITHOUT ANY ADDITIONAL ALLIED ORDER. US POLAD SAID WE AGREED THAT LEGAL UNITY WAS PRIMARILY A GERMAN, NOT ALLIED PROBLEM, BUT THAT WE HAD TO CONTEND WITH POLITICAL REALITIES. IF SENAT WAS CONCERNED THAT IN ABSENCE OF SOME BASE-SETTING ALLIED GUIDANCE ON WHICH IT COULD LEAN, THERE WAS POSSIBILITY IN FUTURE OF LEGISLATION BEING PUT INTO EFFECT IN BERLIN AT VARIANCE WITH THAT IN FRG, IT DID NOT DO ANY HARM TO BE ACCOMMODATING. AS BK/O WAS WORDED, IT WAS FROM OUR STANDPOINT PERMISSIVE, NOT DIRECTIVE, AND IT SERVED ADDITONAL PURPOSE OF PROVIDING ON PUBLIC RECORD DOCUMENT WHICH COULD BE CITED TO SOVIETS AS EVIDENCE THAT NEW LEGISLATION HAD RECEIVED ALLIED SCRUTINY. BRITISH ACTING POLAD HELD LARGELY LISTENING BRIEF, NOT BEING FULLY READ IN ON PROBLEM, BUT CONCURRED WITH ABOVE AND NOTED THAT THIS APPROACH HAD LONDON'S BLESSING AS WELL.

3. FRENCH POLAD FINALLY AGREED TO SUGGESTION THAT MUCH OF CONTENT OF BK/O COULD BE INCORPORATED INTO BK/L, COUCHED IN TERMS OF RESPONSE TO GOVERNING MAYOR'S LETTER TO DEPUTY COMMANDANTS OF DECEMBER 12, 1974. HE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 00290 01 OF 02 141937Z

STILL OPPOSED IDEA THAT BK/L COULD BE ACCOMPANIED BY BRIEF BK/O AUTHORIZING "LAW TO AMEND LAW...", BUT RELUCTANTLY AGREED THAT HE WOULD HAVE NO OBJECTION TO OUR PROFFERING DRAFTS FOR ALLIED PERUSAL. WE HAVE ACCORDINGLY CIRCULATED THE FOLLOWING TO OUR COLLEAGUES:

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USBERL 00290 02 OF 02 182008Z

42/67

ACTION EUR-12

INFO OCT-01 ISO-00 HEW-02 OES-03 SAJ-01 CIAE-00 DODE-00

PM-03 H-01 INR-07 L-02 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 USIA-06 IO-10 BIB-01 /073 W

----- 084142

P 141830Z FEB 75

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 0492

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 0290

A. BEGIN TEXT DRAFT BK/O:

THE ALLIED KOMMANDATURA RAISES NO OBJECTION TO
THE ADOPTION BY THE HOUSE OF REPRESENTATIVES OF AN
ABORTION REFORM LAW IDENTICAL IN ITS PROVISIONS TO THAT
PRESENTLY IN FORCE IN THE FEDERAL REPUBLIC. END TEXT.

B. BEGIN TEXT OF DRAFT BK/L:

DEAR MR. GOVERNING MAYOR:

IN REFERENCE TO YOUR LETTER OF DECEMBER 12, 1974

THE ALLIED KOMMANDATURA HAS TODAY ISSUED

BK/O(75) -- EXPRESSING

NO OBJECTION TO ADOPTION BY THE

HOUSE OF REPRESENTATIVES OF AN ABORTION REFORM LAW

IDENTICAL WITH THAT IN FORCE IN THE FEDERAL REPUBLIC

AFTER THE DECISION OF THE FEDERAL CONSTITUTIONAL COURT

OF FEBRUARY 25, 1975.

IN RESPONSE TO YOUR TO YOUR REQUEST THAT GENERAL

GUIDELINES MIGHT BE PROVIDED FOR DEALING WITH SIMILAR

PROBLEMS IN THE FUTURE; THE KOMMANDATURA WOULD CONSIDER

IT APPROPRIATE FOR THE SENAT AND THE HOUSE OF REPRESENTA-

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 00290 02 OF 02 182008Z

TIVES TO FOLLOW THE PROCEDURE EMPLOYED WITH RESPECT TO THE ABORTION REFORM LAW. IN PARTICULAR, IF LEGAL PROVISIONS OF THE FEDERAL REPUBLIC OF GERMANY ARE ANNULLED, SUSPENDED OR MODIFIED AND THOSE LEGAL PROVISIONS HAVE BEEN OR ARE ADOPTED BY THE HOUSE OF REPRESENTATIVES AND BK/O(51)56 DOES NOT APPEAR COMPLETELY APPLICABLE, IT IS FOR THE SENAT, CONSISTENT WITH SECTION IV OF THE DECLARATION ON BERLIN OF MAY 5, 1955, TO PROPOSE THAT THE HOUSE OF REPRESENTATIVES PROVIDE BY LAW THAT THOSE PROVISIONS ARE ALSO ANNULLED, SUSPENDED OR MODIFIED TO THE SAME EFFECT IN BERLIN.

ALL SUCH LEGISLATION PREPARED BY THE SENAT AND THE HOUSE OF REPRESENTATIVES SHALL BE SUBMITTED PRIOR TO ADOPTION TO THE ALLIED KOMMANDATURA WHICH MAY RAISE OBJECTIONS WITHIN TWENTY-ONE DAYS.

NOTHING IN THE ABOVE SHOULD BE INTERPRETED AS AFFECTING IN ANY WAY THE PROVISIONS OF BK/L(52)35 OR SUBSEQUENT RELATED ALLIED KOMMANDATURA DIRECTIVES OR AS AFFECTING THE EXERCISE OF ALLIED RIGHTS, INPARTICULAR THE RIGHT TO TAKE ANY APPROPRIATE MEASURES WITHIN THE SCOPE OF THE FIELDS SPECIFIED IN THE BERLIN DECLARATION OF MAY 5, 1955. END TEXT.

4. COMMENT: BK/O(51)56 IS ALLIED AUTHORIZATION OF MANTELGESETZ PROCEDURE. WE HAVE USED IT AS CIRCULAR MEANS OF REFERRING TO SITUATIONS INVOLVING CONSTITUTIONAL COURT DECISION. WE HAVE ALSO SOULD TO MEET FRENCH DIFFICULTIES WITH EXPLICIT REFERENCE TO LEGAL UNITY BY CITING SECTION IV OF BERLIN DECLARATION WHICH AUTHORIZED BERLIN AUTHORITIES TO ADOPT "SAME LEGISLATION" AS FRG. WE WOULD HAVE NO OBJECTION TO USING BK/L RATHER THAN BK/O IF FRENCH CAN THERBY BE BROUGHT ROUND TO GENERAL SOLUTION, AND IN FACT IF DRAFT BK/L CAN BE SOLD TO SENAT WE WOULD EVEN CONSIDER IT PREFERABLE FROM STRICTLY ALLIED POINT OF VIEW TO ESCHEW ANY BK/O AT ALL. FROM ALL POINTS OF VIEW, IT MAY BE MORE DESIRABLE TO HAVE BK/L THAT READS LIKE BK/O BUT IS PRIVATE DOCUMENT RATHER THAN BK/O WHICH READS LIKE BK/L AND IS PUBLIC. WITHOUT SOME FORM OF BK/O TO WHICH PUBLIC REFERENCE CAN BE MADE, CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 00290 02 OF 02 182008Z

HOWEVER, SENAT CAN BE EXPECTED TO INSIST ON FURTHER TOUGHENING OF BK/L LANGUAGE.

5. SINCE FEBRUARY 25 DEADLINE IS FAST APPROACHING ,
AND MORE DETAILED FRENCH VIEWS ARE TO BE TABLED
IN BONN, IT MAY BE MOST USEFUL FOR DETAILED COMPARISON
OF DRAFT TEXTS ABOVE AND NEW FRENCH PROPOSALS
TO BE ACCOMPLISHED BY EMBASSIES. WE WOULD BE PREPARED
TO SEND GREEWALD TO BONN TO ASSIST AS MAY BE DESIRED.
END COMMENT. GEORGE

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ABORTION, LAW, INSTRUCTIONS, COURT DECISIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975USBERL00290
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750075-1071, D750058-0008
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750239/aaaabjgh.tel
Line Count: 230
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 75 BONN 2521, 75 BONN 2243, 75 USBERLIN 217
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 16 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 MAY 2003 by ifshinsr>; APPROVED <19 MAY 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FEDERAL CONSTITUTIONAL COURT DECISION ON ABORTION LAW
TAGS: PGOV, WB, GE
To: BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006